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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BENJAMIN J. PARKER, SHANE R. WERNER,
CHARLES DIAZ, and TERRY M. FREDERICK

Appeal 2008-005428
Application 10/054,539
Technology Center 2400

Decided: September 25, 2009

Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT, and KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from the final rejection of claims 1-15. We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We REVERSE.

Appellants' disclosure relates to redirection of traffic from a user in response to a request for authorized services accessible to the user. (Spec. p. 1, ll. 9-10). The instant claims are directed to modifying the way in which the service selection gateway determines the address for redirection, when compared to the prior art. (Spec. p. 2, l. 30 – p. 3, l. 13).

Claims 1-15 were originally pending in this application, where Appellants only appealed claims 1-3, 8, 10 and 11. We remanded the application to the Examiner to cancel the claims which were not appealed (claims 4-7, 9, and 12-15).[1] At present, the application has claims 1-3, 8, 10, and 11 pending, rejected and appealed.

Independent claim 1 is illustrative of the invention and reads as follows:

> 1. A network system comprising:
> a plurality of service-option resources each having a respective numerical network address;
> an address server storing said numerical network addresses and a respective logical name corresponding to each numerical network address, said address server responding to queries by providing a numerical network address corresponding to a logical name contained in a respective query;

[1] *See* Order Remanding to the Examiner, dated July 17, 2008.

> an authorization server storing respective user profiles for identifying service-option resources to which each one of a plurality of users are authorized to use; and
>
> a plurality of service selection gateways coupled to said service-option resources, said address server, and said authorization server, each service selection gateway 1) receiving user traffic from a respective user directed to a nominal destination, 2) determining if said user traffic directed to said nominal destination should be redirected to a respective logical name corresponding to one of said service-option resources in response to a respective user profile, and 3) querying said address server for a respective numerical network address for redirecting said user traffic according to said respective logical name.

The Examiner relies on the following prior art references to show unpatentability of the instant claims:

Zhang 6,119,160 Sep. 12, 2000

Tutorial on DNS, http://web.archive.org/web/19990505010206/http://www.rad.com/networks/1998/dns/main.html (last visited Sep. 23, 2009) (hereinafter "RAD").

Claims 1-3, 8, 10 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhang and RAD.[2]

ISSUE

Appellants contend that the Examiner's rejection is in error because "[t]here is no suggestion in Zhang for any access point or gateway to refer to any of the available services using logical names." (App. Br. 5). Appellants also argue that "there is no motivation to modify Zhang by adding an

[2] Additional art was cited by the Examiner and additional rejections were made in the Final Office Action over claims now cancelled.

address server having logical names for services to which particular user traffic may be redirected." (*Id.* at 6). Appellants further argue that the Examiner has not shown how the proffered motivation to combine the references is provided by the references themselves or by the knowledge of one skilled in the art. (Reply Br. 2). The Examiner finds that there is no difference, with respect to the claims, between the claimed address server and a conventional domain name server (DNS) (Ans. 9), and that the Examiner's proposed modification provides significant advantages to administrators which the Appellants have vastly understated (Ans. 10-13).

Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Thus, the sole issue arising from the respective positions of Appellants and the Examiner is:

Have Appellants shown reversible error in that the Examiner has failed to provide sufficient and proper motivation to combine Zhang and RAD as recited in the rejection of claims 1-3, 8, 10 and 11?

FINDINGS OF FACT

1. The instant Specification details the use of a selective service gateway (SSG), along with an authentication, authorization, and accounting (AAA) server, to allow a user to connect to various subscribed, on-demand network services, if the user subscribes to and is authorized for that service. (P. 2, ll. 1-12; Fig. 1, elements 12, 13, 14, 16, 20, 21).

2. The instant Specification also details that the SSG utilizes logical names to achieve the proper routing, where numerical addresses of those logical names are provided through a shared address server. (P. 6, ll. 9-37; Fig. 4, elements 12, 30-32).

3. Zhang discloses a system for providing computer network access points with multiple-level accounting. (Abs.). The system allows a host computer to access public and private domains through the use of a SSG and an AAA server, such that traffic directed to a nominal destination may be redirected based on a user's profile. (Zhang col. 4, ll. 19-26, 56-58; col. 5, ll. 6-12, 44-50; Fig 1, elements 12, 14, 16, 20, 22).

4. Zhang is silent as to how the SSG is setup or updated.

5. RAD discloses the use of a DNS to translate logical names, such as a website address, into numerical addresses, such as IP addresses (P. 2-3).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988).

> "[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" . . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

> It should not be necessary for this court to point out that a patentable invention may lie in the discovery of the source of a

> problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103. . . . The issue, then, is whether the teachings of the prior art would, in and of themselves and without the benefits of appellant's disclosure, make the invention as a whole, obvious.

In re Nomiya, 509 F.2d 566, 571-572 (CCPA 1975) (internal citations omitted).

ANALYSIS

Appellants contend that the Examiner's rejection is in error because there is no suggestion in Zhang for any access point or gateway to refer to any of the available services using logical names and there is no motivation to modify Zhang by adding an address server having logical names for services to which particular user traffic may be redirected. (App. Br. 5-6). Appellants also argue that the Examiner has not shown how the proffered motivation to combine the references is provided by the references themselves or by the knowledge of one skilled in the art. (Reply Br. 2). The Examiner finds that there is no difference between the claimed address server and a conventional domain name server (DNS), and that the Examiner's proposed modification provides significant advantages to administrators which the Appellants have vastly understated. (Ans. 9-13). We find Appellants' arguments to be compelling.

Appellants have pointed out that the Examiner's motivation goes to solving a problem for which the Examiner has proved no basis. While the Examiner may be correct that solving the problem of updating SSGs can be easily accomplished through the use of an address server, similar to a DNS, that does not, however, provide a basis for how the Examiner arrived at such

a problem. Zhang is silent with respect to this issue (FF 4) and the Examiner has pointed to nothing in the cited art that would suggest that such updating is a point of concern for one of ordinary skill in the art. The Examiner also points out that "Applicant acknowledges that this reconfiguration of the service selection gateways is 'especially burdensome' for larger networks," (Ans. 12), but the Examiner has not cited such a finding in the rejection (Ans. 5), either through citation or official notice.

By the Examiner's logic, an address server, functionally similar to a DNS, could be placed anywhere in the system configuration disclosed in Zhang and could provide some tangible benefit. Without appreciating the problem to be solved, the Examiner's modification of Zhang is not a solution. We do not find that the teachings of the cited prior art would, in and of themselves and without the benefits of Appellants' disclosure, make the invention as a whole, obvious. As such, we find the Examiner erred in rejecting claims 1-3, 8, 10, and 11 as being obvious under 35 U.S.C. § 103(a) over Zhang and RAD.

CONCLUSION

The decision of the Examiner rejecting claims 1-3, 8, 10, and 11 as being obvious under 35 U.S.C. § 103(a) over Zhang and RAD is reversed.

DECISION

The Examiner's rejection of claims 1-3, 8, 10, and 11 before us on appeal is REVERSED.

REVERSED

nhl

cc:

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